

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 87392-001

v

Blue Care Network of Michigan
Respondent

Issued and entered
This 5th day of March 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On January 24, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On January 31, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request.

An independent review organization (IRO) provided analysis of medical issues related to this case. However, this matter can be resolved by analyzing Blue Care Network of Michigan's (BCN) Certificate of Coverage, the contract affecting Petitioner's health coverage. The Commissioner reviews contractual issues under MCL 500.1911(7).

II

FACTUAL BACKGROUND

The Petitioner is a member of Blue Care Network of Michigan (BCN) and her health benefits are defined in the BCN certificate of coverage (the certificate).

The Petitioner requested coverage of \$5,685.00 for orthodontics and \$541.00 for other dental positioning devices. BCN denied the request. The Petitioner appealed and exhausted

BCN's internal grievance process. BCN maintained its denial and sent a final adverse determination letter dated December 20, 2007.

III ISSUE

Did BCN properly deny the Petitioner coverage for orthodontics and orthotics?

IV ANALYSIS

Petitioner's Argument

The Petitioner says that because of her cleft palate she is now left with a craniofacial anomaly that can only be corrected with surgery and repositioning devices. Her anomaly causes severe pain and difficulty chewing her food. Her physicians (Dr. XXXXX, her orthodontist, Dr. XXXXX her temporomandibular joint disorder specialist and Dr. XXXXX, her oral surgeon) recommended orthodontic treatment and orthotics prior to having surgery. She says the surgery that is planned will not only relieve her pain but will improve her ability to eat. However, she cannot have the surgery until after her orthodontic care is completed. Petitioner argues that the required procedures are medical, not dental, in nature and are medically necessary.

Dr. XXXXX stated in an April 3, 2007 letter to:

I have consulted with Dr. XXXXX and together we believe mandibular advancement surgery will be indicated. There may be a transverse discrepancy in the posterior part of the arch that will make it impossible for the posterior crossbite to be corrected.

* * *

Further, I believe Petitioner understands that the temporomandibular [dysfunction] and facial pain that she has experienced may or may not be related to her malocclusion. She understands that the procedures that she is about to start on will improve her health, function and appearance. The resolution of facial pain, however may be a factor that has other influences other than occlusion.

Dr. XXXXX, Petitioner's orthodontist, stated in an April 4, 2007 letter:

Petitioner has a severe Class II division I dental malocclusion and severe maxillary mandibular skeletal imbalance contributing to a

12 mm overjet and anterior/posterior openbite. She has occlusal contacts on second molars only.

* * *

Prior to any surgical procedure it will be necessary for Petitioner to have some pre-surgical orthodontic treatment involving fixed appliances in both arches, which was the reason for Dr. XXXXX's referral to me. Without the pre-surgical orthodontic leveling, aligning and coordinating it will be impossible for Dr. XXXXX to achieve the normal surgical result.

Finally, Dr. XXXXX wrote in a letter to BCN dated February 4, 2006:

We have decided to construct a mandibular orthopedic appliance because of her continued left TMJ and facial pain. We did discuss the benefits, limitations, and consequences of entering or not entering TMD management with her. She received the appliance [on] 11/07/05. The appliance is used to orthopedically stabilize the TMJ and mandible to reduce the TMJ and facial pain. Presently, the appliance is helping decrease the TMJ and facial pain.

The Petitioner argues that the requested services are for a medical not a dental problem.

Therefore, she wants BCN to cover the orthodontics and orthotics.

BCN's Argument

In its final adverse determination letter to the Petitioner, BCN denied coverage for the orthodontic treatments (orthognathic surgery and appliance), saying "The requested services are considered dental in nature and not a covered benefit under your certificate. In addition, your services were provided by a non-contracted provider. Your benefits do not include coverage of dental services or appliances; or services provided by a non-contracted provider that are not pre-authorized by BCN." BCN cited covered services in Section 1 and exclusions in Section 2 of the certificate.

BCN believes it properly denied the Petitioner's request for coverage.

Commissioner's Review

The issue in this case is coverage for orthodontic treatment and orthotics covered under the terms of the certificate. Under the certificate, BCN excludes coverage for dental services and orthotics (dental appliances). The certificate states:

I. SCHEDULE OF BENEFITS

* * *

1.16 PROSTHETICS, ORTHOTICS AND CORRECTIVE APPLIANCES

* * *

F. Benefits are not available for:

1. Dental appliances, hearing aids, eyeglasses or contact lenses, (except as provided in a rider or in Section B above), or for nonrigid appliances and supplies including but not limited to garter belts, arch supports, corsets, corrective shoes, and wigs or hair pieces.

II. EXCLUSIONS AND LIMITATIONS

* * *

2.13 DENTAL SERVICES

Dental services, dental prosthesis, x-rays, and oral surgery are not a benefit under this Certificate except as specifically provided in Section 1.19.

A health maintenance organization (HMO) like BCN is required under Section 3519(3) of the Insurance Code of 1956, MCL 500.3519(3) to provide “basic health services.” Dental care is not a basic health service as defined in MCL 500.3501(b) and HMOs are not required to provide it. BCN's certificate excludes dental services in Section 2 quoted above.

The Petitioner has argued that the services she is requesting are medical, not dental, in nature since she experiences significant pain and cannot chew properly, and the orthodontics and appliances should be covered as part of her health care benefits. The IRO reviewer examined the medical records submitted and concluded that the orthodontics and appliances are not primarily dental in nature for the Petitioner.

While the IRO has found that the orthodontics and appliances are not primarily dental in nature, it is the certificate that determines how benefits are paid. Orthodontics, a class of dental services, and orthotics are excluded under the terms and conditions of her coverage with BCN (see sections 1.16 and 2.13 quoted above) and Michigan Law. The Commissioner therefore finds that BCN's denial was appropriate.

**V
ORDER**

The Commissioner upholds BCN's December 20, 2007, final adverse determination. BCN is not responsible for covering the Petitioner's orthodontics and orthotics under the terms of its certificate and related medical policy.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.